Office-Supreme Court, U.S.
FILED
OCT 5 1962
JOHN F. DAVIS, CLERK

No. 404

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
GENERAL MOTORS CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

ALOYSIUS F. POWER,
HARRY S. BENJAMIN, JR.,
3044 West Grand Boulevard,
Detroit 2, Michigan,
Attorneys for Respondent.

EUGENE L. HARTWIG,
3044 West Grand Boulevard,
Detroit 2, Michigan,
Of Counsel.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

INDEX

	Page
Opinions below	2
Jurisdiction	2
Question presented	2-3
Statutes involved	3-4
Statement of the case	4-7
I. The basic facts which raise the issue	4-6
II. The original Decision and Order of the National Labor Relations Board	6
III. The Supplemental Decision and Order of the National Labor Relations Board	6-7
IV. The decision of the Court of Appeals	7
Petitioner's reasons for granting the writ	7-8
Argument	8-18
I. The petition presents no important question of Federal law	8-9
A. There is no "doubt" created by the Court of Appeals decision	8
B. There is no conflict of authoritative Federal decisional law	8-9
II. The "agency shop" arrangement being illegal from its inception cannot be made legitimate as the result of being made a part of many collective bargaining agreements	9-10
III. The Petitioner's assertion that the Court of Appeals decision is a "formidable obstacle" to the solution of disputes in the missile industry is without foundation	10-11

Page

IV. The Court of Appeals decision is correct and Petitioner has recognized that Court's interpretation of the controlling statutory language to be unassailable..... 11-18

Conclusion 19-20

CITATIONS

Cases:

Bryan Manufacturing Company, 119 NLRB 502, 510 (1957) 17

NLRB v. Electric Vacuum Cleaner Company, Inc., 315 U.S. 685, 694 (1942)..... 17

NLRB v. Schwartz, 146 F. 2d 773, 774 (CA-5; 1945) 14

Spokane & Inland R. R. v. United States, 241 U.S. 344, 350 (1916)..... 17

Statutes:

National Labor Relations Act, as amended 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et seq..... 3

Section 7 ..... 3, 13

Section 8(a) 3, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 404

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
GENERAL MOTORS CORPORATION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, General Motors Corporation, files this Brief in Opposition to the Solicitor General's petition on behalf of the National Labor Relations Board for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit to review the judgment of that Court entered in this case on June 8, 1962.

OPINIONS BELOW

The opinion of the Court of Appeals and the two decisions of the National Labor Relations Board below are as cited by the Petitioner.

JURISDICTION

The opinion and judgment of the Court of Appeals was entered on June 8, 1962. Respondent was informed by the Clerk of the Court of Appeals for the Sixth Circuit in his letter transmitting a copy of the Court's opinion that the Court's Decree was entered on the same day—June 8, 1962—and not on July 3, 1962, as Petitioner states. Aside from this presumed inadvertent misstatement of fact on the part of the Petitioner, the jurisdictional requisites for filing the petition for certiorari appear to be adequately set forth in the petition.

QUESTION PRESENTED

Whether an "agency shop" arrangement—which requires that as a condition of continued employment those employes of an employer who are non-members of the labor organization proposing such an arrangement must pay to that labor organization a sum of money equivalent in amount to the initiation fee and periodic dues required of its members—is lawful under the National Labor Relations Act, as amended, so as to make it mandatory for an employer to bargain with the labor organization concerning such proposal.

The sole question presented involves only the legality of the "agency shop" under Federal law. The legality of the "agency shop" under the law of any state *is not* an issue in this case notwithstanding any impression to the contrary which may be created by Petitioner's wording of the "Question Presented."

STATUTES INVOLVED

The relevant statutory provisions of the National Labor Relations Act, as amended (61 Stat, 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

> "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> Sec. 8(a). It shall be an unfair labor practice for an employer—
>
> (1) to interference with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> • • • • •
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from

making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an *unfair labor practice*) *to require as a condition of* employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made;

* * * * *

(3) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

STATEMENT OF THE CASE

I. THE BASIC FACTS WHICH RAISE THE ISSUE

General Motors Corporation, at all times relevant to the proceedings in this cause, had a three-year national collective bargaining agreement (P.A. 12a, Footnote 2)[1] with the International Union, UAW, AFL-CIO[2] which was entered into under date of October 2, 1958. This Agreement contained a provision making membership in the UAW a condition of continued employment for all employees covered by the Agreement. However, the Agreement also contained language which made this membership requirement inoperative in any state "which prohibits or otherwise makes unlawful membership in a labor

[1] "P.A." refers to the Appendix to General Motors' Brief filed in the Court of Appeals; "B.A." refers to the Appendix to the Board's Brief. "SG.Br." refers to the Solicitor General's Petition herein.

[2] Hereinafter referred to as the "UAW."

organization as a condition of employment" (P.A. 94a). Indiana has such a law (P.A. 54a). As a consequence, the "membership as a condition of continued employment" requirement of the aforementioned collective bargaining agreement could not be made operative with respect to those General Motors employes in Indiana Plants who were represented by the UAW and who were otherwise covered by that Agreement.

On October 20, 1959, the UAW proposed in writing that General Motors enter into an agreement supplementing the October 2, 1958 National Agreement which would require that all General Motors employes in the Corporation's Indiana Plants, who could not be compelled to become and remain members of the Union by reason of the aforementioned terms of the national collective bargaining agreement and the cited Indiana Statute, would nevertheless be required as a condition of continued employment to pay to the UAW a sum of money equivalent to the initiation fee and the monthly dues charged employes who were union members (P.A. 12a; 53a; 54a).

General Motors Corporation by written communication to the UAW dated October 27, 1959 stated that because an "agency shop arrangement • • • as detailed • • • in your letter of October 20, 1959 would violate the National Labor Relations Act, as amended, if incorporated in a collective bargaining agreement, we respectfully decline to comply with your request" (P.A. 13a; 54a).

Upon these basic facts, the UAW filed unfair labor practice charges against General Motors with the National Labor Relations Board alleging an unlawful refusal to bargain.

A Complaint was issued by the National Labor Relations Board, and General Motors Corporation admitted its

refusal to bargain concerning the UAW's "agency shop" proposal but defended its position on the grounds that the "agency shop" was an illegal form of union security under the National Labor Relations Act, as amended, and as a consequence, it had no duty to bargain with respect to a matter which had an illegal objective.

II. THE ORIGINAL DECISION AND ORDER OF THE NLRB

On February 20, 1961, a majority of the National Labor Relations Board in a 3-to-2 decision reached the conclusion that an "agency shop" is illegal under the National Labor Relations Act, as amended, and further concluded that General Motors had not violated the law by refusing to bargain with the UAW concerning it (P.A. 9a-51a).

III. THE SUPPLEMENTAL DECISION AND ORDER OF THE NLRB

Approximately seven months later, following the filing of Motions for Reconsideration by the General Counsel of the National Labor Relations Board and by Counsel for the UAW, a newly constituted Board having two new members who replaced two of the three members of the Board who constituted the majority which held the "agency shop" illegal in the Board's original Decision and Order of February 20, 1961, set aside that decision, and in a 4-to-1 Supplemental Decision and Order dated September 29, 1961, concluded that the "agency shop" was not illegal under the National Labor Relations Act, as amended (P.A. 52a-72a).

This Supplemental Decision and Order was issued even though subsequent to the date of the original Decision and Order the statute had not been changed; no new evidence

had been discovered; no court decision, placing any different interpretation on the law as expressed in the Board's original Decision, had been handed down; and the newly constituted Board had heard no oral argument, as had the Board which issued the original Decision and Order.

IV. THE DECISION OF THE COURT OF APPEALS

It was the Board's Supplemental Decision and Order which General Motors asked the Court of Appeals for the Sixth Circuit to review. That Court in a unanimous opinion set aside the Board's Supplemental Decision and Order and denied the Board's request for enforcement for the reasons, and as stated, in its decision of June 8, 1962 (SG. Br. 21-26).

PETITIONER'S REASONS FOR GRANTING THE WRIT

The Petitioner makes three broad and general assertions under the above heading in its petition. In summary they are—

1. The Court of Appeals decision "casts doubt" upon the legality of the "agency shop" under the National Labor Relations Act, as amended (SG. Br. 8).

2. The "agency shop" should be recognized as a proper form of union security under the National Labor Relatio Act, as amended, because numerous employes are gedly covered by such an arrangement under numerous alleged collective bargaining agreements (SG. Br. 8-9).

3. The decision of the Court of Appeals constitutes "a formidable obstacle" to the solution of certain current disputes in the missile industry "involving the union security issue" (SG. Br. 10-11).

ARGUMENT

The stated reasons have neither substance nor merit.

I. THE PETITION PRESENTS NO IMPORTANT QUESTION OF FEDERAL LAW.

A. There Is No "Doubt" Created by the Court of Appeals' Decision.

As to the first of such reasons, the decision of the Court of Appeals leaves no "doubt," as Petitioner suggests, concerning the status of the law with respect to the issue here raised. The Court of Appeals could have used no more simple, brief, and unequivocal language (SG. Br. 25-26) than it did to state that the "agency shop" is illegal under the National Labor Relations Act, as amended.

B. There Is No Conflict of Authoritative Federal Decisional Law.

There is no other decision of a court of comparable jurisdiction or stature which has held the "agency shop" to be legal.[3] Thus, there is no conflict of opinions between the federal courts of appeals. The Sixth Circuit is the highest Federal Court to have spoken on the issue here presented. Its decision at the present time constitutes authoritative

[3] While no question has been raised or is before this Court concerning the legality of the "agency shop" under state law, it is to be noted that Petitioner has volunteered the correct information that in the 10 states "that have passed upon the legality of the 'agency shop,' Indiana courts are the only ones which have upheld agency shop arrangements." (SG.Br. 19, Footnote 15)

Federal decisional law. What the Petitioner really is complaining about is its dislike for the decision. But such dislike, which is always the plight of the loser in a lawsuit, cannot be a persuasive or compelling reason which should move this Court to exercise its discretionary certiorari powers.

The second and third above-summarized reasons of the Petitioner "for granting the writ" deal in essence with an attempt to show that a question of national importance is before the Court. Petitioner attempts to demonstrate this through the use of figures and by means of an emotional plea.

II. THE "AGENCY SHOP" ARRANGEMENT BEING ILLEGAL FROM ITS INCEPTION CANNOT BE MADE LEGITIMATE AS THE RESULT OF BEING MADE A PART OF MANY COLLECTIVE BARGAINING AGREEMENTS.

This Court is urged to give weight to certain cited figures (SG. Br. 9, Footnote 6) purporting to show that numerous workers under numerous contracts are covered by "agency shop" arrangements. None of the figures presented were in the record made before the Trial Examiner which was the only record before the Board when it rendered its original and its supplemental Decisions and Orders. The cited figures, insofar as they relate to the extent to which "agency shop" provisions have been incorporated in a sampling of collective bargaining agreements, are the same as those set forth in the views of the minority of Board members who signed the original Board Decision and Order in this case, and are as set forth in the views of the majority of the Board members who signed the Supplemental Decision and Order of the Board in this

case. In each instance the Board members citing the figures indicated "they were not controlling of the legal issue" presented (P.A. 45; P.A. 61a).

The same figures can be no more controlling or persuasive today. The Court of Appeals has held the "agency shop" to be illegal. The fact that 100 or 100,000 employes may be covered by illegal "agency shop" contracts will not make such contracts legitimate, particularly when the governing law never made the contracts legitimate in the first instance.

III. THE PETITIONER'S ASSERTION THAT THE COURT OF APPEALS' DECISION IS A "FORMIDABLE OBSTACLE" TO THE SOLUTION OF DISPUTES IN THE MISSILE INDUSTRY IS WITHOUT FOUNDATION.

The third of Petitioner's "reasons for granting the writ" finds expression in the suggestion that the decision below has created a "formidable obstacle" to the solution of certain current disputes involving the union security issue in the missile industry (SG. Br. 10). This suggestion has not only a hollow ring, but, today, an empty one.

The special panel appointed by the President of the United States, and referred to by the Petitioner in its Petition, to seek solution of the union security issues in the missile industry filed its recommendations with the President subsequent to the filing of the Petition herein. The panel has recommended the union shop as a solution to the union security issue. At the time this Brief is being prepared there is every reason to believe, from reports in the public press, that most of the employers and labor organizations involved in the missle dispute have either accepted, or may accept, the Panel's "union shop" recom-

mendation; that as a consequence the union security issue will be resolved; and that industrial peace will prevail in the missle industry.

If such is the result, the Court of Appeals' decision which the Petitioner has envisioned as a "formidable obstacle" to the resolution of the missle industry's union security will prove to have been but a mirage. If such is not the result by the time the Court considers this Brief, the Court of Appeals' decision can in no sense be considered a "formidable obstacle" to the solution of the missle industry's union security issue in view of the fact that the decision is correct as demonstrated in the "argument" later herein.

IV. THE COURT OF APPEALS' DECISION IS CORRECT AND PETITIONER HAS RECOGNIZED THAT COURT'S INTERPRETATION OF THE CONTROLLING STATUTORY LANGUAGE TO BE UNASSAILABLE.

Aside from the arguments made by the Petitioner in connection with the aforementioned summarized "reasons for granting the writ," the only other plea made which requires an answer is that based upon the false assumption that the cited relevant statutory language sanctions an "agency shop" arrangement because it is a lesser form of union security than a union shop arrangement which is permissible under the law. The Circuit Court adequately and properly disposed of any such contention when it said;

> "We do not regard the 'agency shop arrangement' as being something lesser than a 'union shop.' We believe it is entirely different. A Union security agreement is premised upon membership in a labor organization. An 'agency shop' on the contrary is based upon an employee paying charges in

lieu of union membership as a condition of employment. (SG.Br. 25)

* * * * *

"We think the provisions of the Act are clear and unambiguous and need no judicial construction. The language of Section 7 of the Act which provides 'Employees * * * shall also have the right to refrain * * * except to the extent that such right may be affected by *an agreement requiring membership in a labor organization as a condition of employment* as authorized in Section 8(a)(3).' (29 U.S.C. Section 157) 'means what it says and excepts from the operation of the law only agreements requiring membership in a labor organization. (Italics ours.) An employee involuntarily subjected to the 'agency shop arrangement,' as a condition of his employment, is not a Union member or the equivalent of it. If Congress intended to permit the exaction of these types of charges in lieu of Union membership, as a condition of employment, it could easily have so provided in apt language. It is not for us, under the guise of construction, to enlarge the clear language of this statute. In our opinion, the provision for an 'agency shop' would violate Section 7 and Sections 8(a)(1) and (3) of the Act as this type of arrangement is not excepted from the Act. The employer was therefore not required to bargain with respect to a proposal which was in violation of the Act." (SG.Br. 25-26)

It is clear from the foregoing that the Court of Appeals grounded its decision upon the language of Section 7 of the statute and its interrelationship to Section 8(a)(1) and (3) of the amended Act.

Both the Board's General Counsel (P.A. 6a) and the Solicitor General (SG. Br. 27) have recognized that Section 7 of the Act is one of the relevant statutory provisions which must be considered in disposing of the issue raised

in this case. However, just as the General Counsel of the Board, when he was before the Court of Appeals, did not address himself to the language of Section 7 and its application to this case, the Solicitor General now likewise avoids considering the Section 7 language, a necessity essential to a proper disposition of the issue herein.

An examination of the Solicitor General's argument and plea associated with the statutory language will not reveal a single word, phrase, footnote, or reference of any kind, to Section 7 of the language thereof. The Court of Appeals analysis and application of the specific language contained in Section 7, which puts to rest all of the arguments of the Solicitor General, is completely ignored by him, remains unchallenged and thus, presumably, is acknowledged by the Petitioner as irrefutable.

Nowhere in the amended National Labor Relations Act is there language expressly authorizing or permitting employers and labor organizations to enter into an "agency shop" agreement of the type here proposed by the UAW.

Such a bargaining demand and any agreement incorporating such a demand flies directly in the face of basic Federal labor policy as expressed in Section 7 of the National Labor Relations Act, as amended, which provides that:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, *and shall also have the right to refrain from any or all of such activities* • • •." (Emphasis supplied.)

Congress here declared in clear and unequivocal language the right of employes not only to engage in union activities

and to undertake union obligations but also their concomitant right to refrain therefrom.

What this statement of national policy does make clear, and what is overlooked by the Petitioner in its contentions made herein, is that the Act was passed primarily to secure the rights of employes and not to enhance the position of labor organizations.

The Court of Appeals for the Fifth Circuit recognized this as the fundamental objective of the National Labor Relations Act, even before the important 1947 amendments to the Act were added, when it stated in *NLRB v. Schwartz*, 146 F.2d 773, 774 (CA-5; 1945):

> "Contrary to a rather general misconception, the National Labor Relations Act was passed for the primary benefit of the employees as distinguished from the primary benefit to labor unions, and the prohibition of unfair labor practices designed by an employer to prevent the free exercise by employees of their wishes in reference to becoming members of a union was intended by Congress as a grant of rights to the *employees* rather than as a grant of power to the union."

Nothing in the Taft-Hartley amendments of 1947 or in any subsequent court decision renders the foregoing observation any less true today.

If Section 7, as amended in 1947, were limited solely to the enumeration of the rights specified therein, undeniably all forms of union security and, indeed, any scheme, device, or arrangement requiring an employe to engage in union activities or to render assistance in any form to a union would be unlawful as a direct infringement on the rights of employes guaranteed by that section.

The principal clause of Section 7, standing alone, renders *prima facie* unlawful not only the closed shop but also the union shop and maintenance of membership, as well as the "agency shop" proposed by the UAW herein. The vice inherent in each of these arrangements is that each necessarily interferes with the protected Section 7 right of employes to refrain from forming or joining or assisting labor organizations.

Accordingly, employers or labor organizations desirous of placing limitations on the exercise of the employe rights spelled out in Section 7 must find special sanction in the Act for such restrictions or suffer the consequences of committing an unlawful labor practice.

Having spelled out the rights of employes in the principal clause of Section 7, Congress carved out an exception to the exercise by employes of the otherwise unqualified rights guaranteed therein by providing that employers and labor organizations may lawfully agree to interfere with these protected rights (including the right to refrain from assisting a labor organization) but only to the extent of requiring *membership* in a union as a condition of employment as authorized in Section 8(a)(3) of the amended Act.

By the express terms of this exception, the one lawful permissible interference with the rights of employes guaranteed in Section 7 is strictly limited to agreements requiring *membership* in a labor organization and then only to such agreements requiring membership as are "authorized" in Section 8(a)(3) of the amended Act. The language does not provide that an agreement is "authorized" which requires the payment of service fees or carrying charges *in lieu of membership*. The reference in the Section 7 exception is clearly to the first proviso of Section 8(a)(3) wherein employers are permitted to make an agree-

ment with a labor organization to require as a condition of employment, *membership* in a union within a specified period of time providing certain other conditions, not here relevant, have been met.

Section 8(a)(3) provides in pertinent part that:

> "It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided, That nothing in this Act,* or in any other statute of the United States *shall preclude an employer from making an agreement with a labor organization* * * * *to require as a condition of employment, membership therein* on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, * * *." (Emphasis supplied.)

The Section 8(a)(3) proviso quoted above spells out in language which is clear and unequivocal on its face the *only* type of collective bargaining agreement that may permissibly infringe upon the rights guaranteed to employes in Section 7 and not expose an employer to a violation of Section 8(a)(3). Such an agreement must be limited to conditioning continued employment upon *membership* in a labor organization. An examination of the quoted proviso makes it clear, without the need to resort to legislative history or other aids to determine the intent of Congress, that to condition employment on anything other than *membership* in a labor organization is contrary to the mandate of the statute.

As an exception to, or limitation on, the national labor policy of securing employe rights as specified in Section 7 of the Act, sound principles of statutory construction require that the "union security" proviso of Section 8(a)(3) be strictly construed.

It is an established rule of statutory construction that a proviso which operates to limit the application of the provisions of a statute general in terms should be strictly construed and held to include no case not clearly within the purpose, letter, or express terms of the proviso. This Court in *Spokane and Inland R.R. v. United States*, 241 U.S. 344, 350 (1916) phrased the rule as follows:

> "But to so treat the Act would be in plain disregard of the *elementary rule requiring that exceptions from a general policy which a law embodies should be strictly construed* • • •." (Emphasis supplied.)

In *NLRB v. Electric Vacuum Cleaner Company, Inc.*, 315 U.S. 685, 694 (1942) this Court made the following observation concerning the construction to be placed on the first proviso of Section 8(a) of the original Act:

> "The provision for a closed shop, as permitted by §8(3), follows grammatically, a prohibition of discrimination in hiring. *These words of the exception must have been carefully chosen to express the precise nature and limits of permissible employer activity in union organization.*" (Emphasis supplied.)

The relationship between the national policy as expressed in Section 7 and the union security exception thereto is nowhere more clearly stated than in *Bryan Manufacturing Company*, 119 NLRB 502, 510 (1957) wherein former NLRB member Jenkins in his concurring opinion points out:

"Union-security clauses authorized by the proviso clause of Section 8(a)(3) are in derogation of the rights guaranteed employees in the definitive statement of national policy contained in Section 7. That section emancipates employees from coercion and restraint by labor and management alike. Their right to engage in or refrain from concerted activity at their own election has been enacted into law. But while that section enacted into law their rights to engage in or refrain from concerted activities at their election, the proviso clause allows a contractual compulsion of union membership and thus restricts the free choice otherwise provided by Sections 7 and 8(a)(3). The authority so conferred by the proviso is, however, carefully circumscribed by conditions precedent to and by limits upon its exercise. As an exception to declared public policy, a union-security clause, the conditions under which it was executed, and action pursuant to it merit, when subject to dispute, strict scrutiny."

On its face, it is apparent that the UAW's proposal for an "agency shop" does not involve "membership" as that term is commonly understood. Accordingly, to construe the quoted 8(a)(3) proviso which expressly limits the permissible scope of agreements requiring *membership* as a condition of employment, to authorize, as well, those agreements which require something *other than membership* as a condition of employment constitutes an unsound and offensive departure from the foregoing rule of statutory construction and subverts the general prohibition against discrimination which Congress spelled out in the principal clause of Section 8(a)(3) as well as the rights of employes protected by Section 7.

CONCLUSION

The Court of Appeals in holding the "agency shop" to be illegal under the National Labor Relations Act, as amended, correctly read and applied the applicable law as written.

There is no other Court of Appeals decision in conflict with the opinion of the Sixth Circuit.

The application of the language of Section 7 of the Act is basic to the resolution of the issue here presented. The Petitioner has acknowledged that Section 7 is "relevant" to the disposition of this case. The Petitioner has not challenged or addressed itself to the conclusion expressed by the Court of Appeals concerning the meaning and application of the language of Section 7 of the Act to the issue. It must be assumed therefore that the Appellate Court's views and conclusions concerning Section 7 are recognized by Petitioner as being unassailable.

The figures alluded to by Petitioner purporting to demonstrate that numerous collective bargaining agreements incorporating an "agency shop" arrangement covering numerous workers, are irrelevant because an "agency shop" arrangement, being illegal from its inception, cannot be made legitimate solely by the weight of numbers. Even the majority of the National Labor Relations Board members whose decision was set aside by the Court of Appeals recognized that the cited figures were not persuasive in resolving the legal issue presented.

The Petitioner's plea that this Court should review the Court of Appeals' decision because it constitutes a "formidable obstacle" to a solution of the union security issue in

the current missile industry dispute is without foundation. The Presidential panel appointed to find a solution to the dispute has recommended a "union shop" and as of this writing most of the companies and labor organizations involved or affected have reportedly received and considered the recommendation favorably.

The decision of the Court of Appeals is correct. For this reason, and the other foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Aloysius F. Power

ALOYSIUS F. POWER,

Harry S. Benjamin, Jr.

HARRY S. BENJAMIN, JR.,
Attorneys for Respondent.

EUGENE L. HARTWIG,
Of Counsel.

October 4, 1962.